

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO SALES TAX FINANCING
CORPORATION (“COFINA”),
Debtor.

PROMESA

Title III

No. 17 BK 3284-LTS

**STATEMENT IN SUPPORT OF, AND JOINDER TO, AMBAC ASSURANCE
CORPORATION’S MOTION FOR ENTRY OF ORDER AUTHORIZING
DISCOVERY UNDER BANKRUPTCY RULE 2004**

The COFINA Senior Bondholders’ Coalition² submits this statement in support of, and joinder to, *Ambac Assurance Corporation’s (“Ambac”) Motion for Entry of Order Authorizing*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² The members of the COFINA Senior Bondholders’ Coalition are Fideicomiso Plaza, and the following entities, either as beneficial holders or on behalf of managed funds and accounts: Aristeia Horizons, L.P.; Canary SC Master Fund, L.P.; Canyon Capital Advisors LLC (on behalf of its participating clients); Cyrus Capital Partners, L.P.; Decagon Holdings 1, L.L.C.; Decagon Holdings 2, L.L.C.; Decagon

Discovery under Bankruptcy Rule 2004 [Dkt. No. 1873 in Case No. 17-3283-LTS; Dkt. No. 240 in Case No. 17-3284-LTS] (the “Rule 2004 Motion”).³ In support of, and joinder to, the Rule 2004 Motion, the COFINA Senior Bondholders’ Coalition respectfully states as follows:

STATEMENT

1. In the Rule 2004 Motion, Ambac requests Court authority to take discovery of (i) the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as representative of the Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Sales Tax Financing Corporation (“COFINA,” and together with the Commonwealth, the “Debtors”); (ii) the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”); (iii) the Commonwealth; and (iv) COFINA, and approving procedures to take related discovery from other parties with respect to the generation and collection of sales and use tax (“SUT”) since Hurricane Maria made landfall in Puerto Rico on September 20, 2017.

2. Ambac seeks both the production of documents and examination of relevant officials of the Oversight Board, the Commonwealth, COFINA, and AAFAF. As holders of approximately \$2.6 billion of COFINA senior bonds, the COFINA Senior Bondholders’ Coalition joins in the Rule 2004 Motion and requests the Oversight Board, the Commonwealth, COFINA, and AAFAF also produce to it copies of all responsive documents that it produces to Ambac pursuant to the document request reflected on Exhibit 1 to the Rule 2004 Motion. The COFINA

Holdings 3, L.L.C.; Decagon Holdings 4, L.L.C.; Decagon Holdings 5, L.L.C.; Decagon Holdings 6, L.L.C.; Decagon Holdings 7, L.L.C.; Decagon Holdings 8, L.L.C.; Decagon Holdings 9, L.L.C.; Decagon Holdings 10, L.L.C.; GoldenTree Asset Management LP; Old Bellows Partners LP; Scoggin Management LP; Taconic Master Fund 1.5 L.P.; Taconic Opportunity Master Fund L.P.; Tilden Park Capital Management LP; and Whitebox Advisors LLC.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Rule 2004 Motion.

Senior Bondholders' Coalition further requests that the Court authorize it to attend and participate in any examinations that the Court authorizes in response to the Rule 2004 Motion.⁴

3. As the Court is aware, pursuant to Commonwealth statutes passed a decade ago, the Commonwealth transferred legal ownership of a portion of the SUT (the "Dedicated Sales Tax") to COFINA to be held separate and apart from the Commonwealth's general fund, and granted statutory authority for COFINA to issue bonds and pledge the Dedicated Sales Tax as security. Besides ownership of the Dedicated Sales Tax, COFINA has no other assets. In return for the insulation from the general fund's credit risk, the COFINA bonds are non-recourse to the Commonwealth. Consequently, payment of COFINA bonds from Dedicated Sales Tax is dependent upon the generation and collection of the SUT.

4. The devastation wrought by the recent hurricanes that impacted the Island has only compounded an unprecedented financial crisis that the Commonwealth has been coping with since 2006. At the early stages of the crisis, the Commonwealth adopted, for the first time, a sales and use tax. For over a decade, the SUT has proven to be a reliable, resilient and robust revenue generator for the Commonwealth, both through the securitization of the revenue stream to back COFINA bonds and from the annual amount of SUT that flows directly to the Commonwealth. Nonetheless, even before the hurricanes, the Commonwealth recently began taking increasingly provocative actions with respect to the collection of the SUT that is transferred to COFINA. *See, e.g.,* Act 84 of 2016; Act 26 of 2017.

⁴ Ambac has informed the COFINA Senior Bondholders' Coalition that it consents to the COFINA Senior Bondholders' Coalition's joinder to the Rule 2004 Motion. In the event that the Court approves the Rule 2004 Motion, the COFINA Senior Bondholders' Coalition will work in collaboration with Ambac to ensure an efficient discovery process, including the examination of witnesses. Towards that end, the COFINA Senior Bondholders' Coalition does not intend to make any additional requests for production of documents or depositions beyond those that Ambac has requested in the Rule 2004 Motion.

5. The impact of Hurricane Maria has impaired the generation and collection of SUT, both directly from the effects of the hurricane and indirectly from actions taken or proposed to be taken by the Rosselló administration purportedly in response to the extensive damage caused by Hurricane Maria. Among the direct effects are a decrease in overall business activity as well as reported impediments to collection of SUT resulting from the lack of power on the Island. In addition, the Rosselló administration has issued Executive Order 2017-068 (the “SME Executive Order”), which suspended SUT collection on small and medium-sized enterprises until the end of the calendar year, and has also proposed legislation that would have authorized the Governor to suspend the collection of the SUT, including the Dedicated Sales Tax owned by COFINA. The Legislative Assembly rejected the latter initiative as a result of constitutional and other legal concerns.

6. As Ambac explains in the Rule 2004 Motion, since Hurricane Maria made landfall “creditors . . . lack any visibility into how much SUT has been collected and deposited into the relevant accounts (whether at Banco Popular de Puerto Rico or elsewhere); whether the money has been appropriately segregated; and the degree to which an electronic deposit structure remains in place (and what percentage of the SUT is collected in that manner).” All of this is critical financial information to holders of sales tax-backed bonds.

7. Rule 2004 permits examinations relating to the “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.” Fed. R. Bankr. P. § 2004(b). For the reasons set forth in the Rule 2004 Motion, the information sought is highly relevant to COFINA’s financial condition and, ultimately, to the formulation of any plan of adjustment for COFINA, and is narrowly tailored to achieve the purposes of Rule 2004.

CONCLUSION

For the reasons set forth in the Rule 2004 Motion and herein, the COFINA Senior Bondholders' Coalition respectfully requests that the Court grant the Rule 2004 Motion, authorize the COFINA Senior Bondholders' Coalition to participate in the Rule 2004 discovery process in a manner consistent with the requests made in the Rule 2004 Motion, and grant such other and further relief that the Court deems appropriate.

Respectfully submitted,

DATED: December 4, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the parties of record.

/s/ Carlos R. Rivera-Ortiz
USDC-PR 303409